



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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Ref: ENF-L

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Dear Mr. Daley and Mr. Murray:

Thank you for your responses to EPA's December 2, 2010 letter. Based upon Park City's letter dated December 30, 2010 and upon UPCM's letter dated January 4, 2011, EPA is willing to continue to work towards negotiating an Administrative Order on Consent for Operable Units 3 and 4 of the Richardson Flats Site. In order to move forward quickly, given the limited negotiations extension of January 31, 2011, EPA is providing preliminary responses to issues raised in those letters.

Park City

• **Interim Repository Access and Total Repository Capacity**

Request for a written commitment granting 35,000 cubic yards of capacity to Park City upon execution of a Settlement Agreement.

As referenced in the Regional Administrator's June 14, 2010 correspondence to Dana Williams, EPA needs a fully executed administrative agreement in place to grant this request. At that point, the Agency will authorize Park City to dispose of another 35,000 cubic yards of developmental waste at the OU1 repository.

Request for a reasonable assurance of access to current and future repository capacity.

EPA seeks Park City's suggestions on what "reasonable assurance" EPA could provide given EPA's inability to commit to a remedy that has not yet been selected.

Request for a more favorable "exit ramp".

EPA solicits from Park City a suggestion of a more favorable "exit ramp" that would not create an open-ended agreement.

Request to expand the cubic yards available in the repository for development waste.

The amount of repository space available for Park City's developmental waste is determined by two factors. The first factor is the total capacity of the new repository. This figure has already been determined by the Agency. The second factor is that any new repository will be a CERCLA repository and, as such, a vast majority of the waste therein must be CERCLA waste. EPA is willing to have further discussions with Park City within the context of these constraints.

- **Riparian Habitat Reconstruction at Silver Maple Claims and the Middle Reach and Revegetation at a New Repository**

EPA cannot predetermine a cleanup component before issuance of a decision document. EPA normally mitigates any damage caused solely by EPA cleanup measures. Restoration of property damaged by mining contamination relates more to natural resource damages, which BLM and the State remain open to discuss as part of negotiations.

- **Public Participation Prior to Final Execution of a Settlement Agreement.**

EPA will follow the normal CERCLA public involvement process. If Park City is looking for a special public review for its constituency, that responsibility needs to be addressed by Park City.

- **Potential Liability for and Water Quality Impacts of Sources in the Upper Silver Creek.**

EPA has identified, investigated and resolved the issues it can resolve in the area referenced, including liability issues. No further work is contemplated at this time.

- **Minor adjustments to cash contributions.**

As stated in EPA's December 2, 2010 letter to Thomas Daley, the Agency is willing to discuss such adjustments.

United Park City Mines

- **Tipping Fees**

EPA's proposal, as set forth in the December 16th draft AOC, is that Park City will be allowed to dispose of 362,000 cubic yards of development waste in any new repository and will pay a to be determined tipping fee to UPCM. It is EPA's intent to adhere to this proposal, unless there is a good rationale to do otherwise.

- **UPCM agrees to pay 20% of response costs incurred by Park City in performing EPA-approved work at OU4, with the limitation such costs not be related to water or water treatment.**

As the Agency cannot yet project the response action for OU4, it cannot know whether the response will involve water treatment or not. Even if the response action does include water treatment, UPCM's share should remain as proposed.

- **ASARCO funds be used, but UPCM could construct any new repository.**

EPA has not yet sought written authorization from Headquarters on this issue, but will be prepared to discuss it in the near future.

- **Request that the AOC require that all data generated during the EE/CA may not be used by any party for any purpose other than the performance of clean-up work.**

EPA inserted a provision in the draft Administrative Order on Consent to address this concern. The Order states that data generated during the course of the response actions performed pursuant to the Settlement Agreement shall not be used by any Party for any adversarial proceeding, other than a proceeding to enforce the terms of the Settlement Agreement or a proceeding for injunctive relief at the Site pursuant to CERCLA Section 106.

- **Request that no party other than the Agencies shall have any review or oversight role.**

EPA intends that all parties to the settlement agreement be provided significant review and comment of work products. "Approval" and oversight shall remain with EPA, BLM and the State.

- **Provision of the broadest possible releases.**

EPA has structured the proposed settlement agreement to provide releases appropriate for a removal action. These include:

- receipt covenants for all costs and work associated with the Site
- contribution protection for "matters addressed" (all costs and work associated with the Site)

- covenants and waivers between the respondents

- **Financial Assurance.**

Financial assurance remains a critical commitment for EPA. The settlement agreement must include liquid financial assurances based on projected costs of the work. EPA is willing, however, to discuss utilizing an approach similar to that negotiated with UPCM in the context of the OU2 RI/FS settlement.

- **Access.**

The Agency requests further clarification in upcoming discussions.

- **UPCM requests that work will be phased so as not to create an undue burden on entities performing the work.**

EPA will use good faith efforts to phase the work so as not to create an undue burden.

- **State or federal grants should benefit all parties.**

The Agency requests further clarification in upcoming discussions.

- **Real property provided for the new repository should be deeded to a party acceptable to UPCM.**

EPA prefers that UPCM retain title to the repository.

- **Request that the Agencies oversee all aspects of any new repository.**

EPA will oversee all issues related to tipping fees, rules of repository use, acceptable materials and quantities that can go into any new repository.

- **In the event EPA considers including removal obligations (for areas other than Prospector Square) in the AOC, then UPCM does not want to be the sole party performing or contributing to the removal action.**

Under EPA's proposal, UPCM is performing the work at OU3, but with two sources of financial contribution: payment by Park City of 10% of all response costs incurred by UPCM in performing EPA-approved work at OU3; and construction of the repository by EPA.

- **The Agencies identify historical PRPs.**

The Agency has completed its liability analysis for the Site. As indicated in EPA's letter of December 2, 2010, the Agency is not willing to add any other parties to these negotiations.

The timeline for negotiations is short. It is important that we narrow issues for resolution, not expand them. The responses provided above are meant to move the negotiation in that direction. Despite the significant costs associated with the commitments proposed, I request that you carefully consider the likely significant benefits to each of the respondents if we are successful in the negotiation and compromise where necessary to achieve those benefits. Please let Mia Bearley know what times you may be available during the week of January 10th for our next negotiation session.

Sincerely,

Matt Cohn
Legal Enforcement Program

cc: Mia Bearley, EPA
Kathy Hernandez, EPA
Maureen O'Reilly, EPA
John Dalton, EPA
Kelcey Land, EPA
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